



CITY OF HAYWARD

AGENDA REPORT

AGENDA DATE 09/23/03

AGENDA ITEM 4

WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Appeal of Planning Commission Denial of Variance Application No. PL-2003-0219 - To Retain a 750-Square-Foot Carport that is 2- to 2½ Feet From the Property Line and Exceeds 50 Percent of the House Area – Roberto Lomeli (Applicant/Owner) – The Property Is Located at 956 Folsom Avenue

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolution finding the project categorically exempt from CEQA review and uphold the Planning Commission's denial action.

DISCUSSION:

The City received a complaint that the appellant had constructed two carports on his property without the benefit of building permits. One of the carports is 350 square feet and the other is 750 square feet. Rather than remove them, the appellant applied for variances to retain them. The staff had recommended that the Planning Commission deny the variance requests. At the public hearing the Planning Commission directed staff to return to a future meeting with findings and conditions to support approval of the smaller, 350-square carport and denial of the larger, 750 square-foot structure. At a subsequent meeting, the Planning Commission approved the variance for the smaller carport and denied the variance request for the larger structure. Since that time the appellant has received a building permit to bring the smaller structure into compliance with the Uniform Building Code. He also appealed the Planning Commission's denial action of the larger carport, shown on Exhibit C.

A variance is required for the 750-square-foot freestanding carport because it is only 2- 2½ feet from the front and side property lines where 20 feet and 5 feet respectively are required and because it exceeds the maximum floor-area allowance of 50 percent of the area of the house. For each parcel, the cumulative area of all accessory structures is limited to no more than 50 percent of the area of the primary residential structure, which in this case is 1,288 square feet. Therefore, accessory structures are limited to a maximum of 644 square feet. The existing garage and attached carport approved by the Planning Commission already constitute 750 square feet.

Although the property is irregular in shape and it is unusual in that the carport is not visible from Folsom Avenue, the Planning Commission found that approving the variances for the carport would be granting a special privilege. The carport dominates the property, and it partially blocks access to the driveway by restricting the driveway entrance to 12 feet. It also creates a less than 14-foot vehicle backup where at least 26 feet is required. Also, the carport is incompatible with surrounding properties. The neighboring residents should be afforded adequate light, air and privacy; however, the location of the carport encroaches into required setbacks, negatively impacting these properties.

During the Planning Commission hearing, a neighboring resident spoke on behalf of the appellant and indicated that he views the carports as improvements to the property.

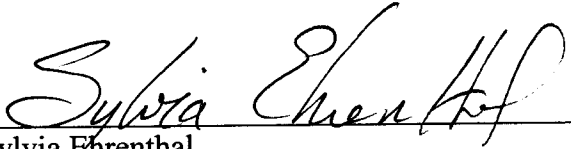
Because of the proximity of this structure to property lines, the Uniform Building Code does not permit an open carport; therefore, should the City Council approve the structure, a one-hour fire wall would have to be constructed along three sides of the carport, and the overhanging eaves would have to be eliminated. Because the building was constructed without benefit of a building permit, the structural integrity of the construction is unknown and other structural changes could be necessary.

Prepared by:



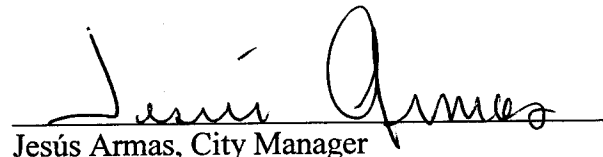
Arlynn J. Camire, AICP
Associate Planner

Recommended by:



Sylvia Ehrenthal
Director of Community and Economic Development

Approved by:



Jesús Armas, City Manager

Exhibits:

- A. Findings for Denial
- B. Letter of Appeal
- C. Staff Reports and Planning Commission Minutes, dated June 26, 2003 and July 10, 2003
Draft Resolution
Plans

**VARIANCE APPLICATION NO. PL-2003-0219
ROBERT LOMELI (APPLICANT/OWNER)
750-SQUARE-FOOT CARPORT
956 FOLSOM AVENUE
FINDINGS FOR DENIAL**

- A. The proposed project is statutorily exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15270 (a), Projects Which are Disapproved.
- B. Although the property is of unusual shape and location, the location of the structure in proximity to the property line and in excess of permitted area would result in a building that is incompatible with surrounding properties in that neighboring properties should be afforded adequate light, air and privacy associated with buildings constructed where permitted.
- C. Strict application of the Zoning Ordinance would not deprive such property of privileges enjoyed by other properties in the vicinity under the same zoning classification in that other properties at similar size and shape would not be able to build within the minimum front or side yard set backs.
- D. The variances would constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and the Single-Family Residential (RS) District in which the property is situated in that other properties with similar circumstances have not been granted the same consideration.

JUL 03 2003

July 10, 2003

PLANNING DIVISION

Arlynnne J. Camire, AICP
Associate Planner

Subject: Variance Application No. PI-2003-021
956 Folsom Avenue, Hayward, CA.

Dear Mrs. Arlynnne J. Camire,

We are appealing because we
do not agree with the decision
of the Planning comission on June
26, 2003.

We will appreciate your
cooperation.

Thank You,
Roberto Lomeli G

MINUTES



REGULAR MEETING OF THE PLANNING
COMMISSION, CITY OF HAYWARD
Council Chambers
Thursday, July 10, 2003, 7:30 P.M.
777 "B" Street, Hayward, CA 94541

Chairperson Zermeño said he would support the motions since older neighborhoods need improvement.

The motion passed 5:1:1, with Commissioner Bogue voting No, and Commissioner Fraas abstaining.

3. **Variance Application No. PL-2003-0219 – Roberto Lomeli (Applicant/Owner) – To Retain a 350 Square-Foot Carport Addition that Would Exceed 50 Percent of the Residence Area – The Property is Located at 956 Folsom Avenue**

Associate Planner Camire described the property and asked for approval for the variance, with the findings and conditions.

The public hearing opened and closed at 9:15 p.m. with no speakers on the item.

Commissioner Sacks **moved**, seconded by Commissioner Halliday, to approve the staff recommendation. She then thanked staff for their work in this area.

The motion passed, 6:0:1, with Commissioner Fraas abstaining.

4. **Findings and Conditions of Approval for Site Plan Review No. PL-2003-0012 – James Jensen (Applicant/Owner) – Request to Construct a Single-Family Dwelling with a Two-Car Garage that Exceeds 50 Percent of the Frontage of the Dwelling – The Property is Located at 24431 Second Street**

Principal Planner Patenaude presented an overview of the previous presentation and the PC's finding that the garage was appropriate. He explained the conditions of approval most of which were discussed at the last meeting.

The public hearing was opened and closed at 9:19 p.m. with no public input on the item.

Commissioner Sacks **moved**, seconded by Commissioner Thnay, to accept the findings and conditions. She said she was happy to have found it appropriate to accept the design.

The motion passed, 6:0:1, with Commissioner Fraas abstaining.

ADDITIONAL MATTERS

5. Oral Report on Planning and Zoning Matters

There were no oral reports.

5. Commissioners' Announcements, Referrals

Commissioner Bogue discussed information he had received on two workshops to be held in Oakland. He had made copies to pass out to the other Commissioners.

DRAFT



CITY OF HAYWARD AGENDA REPORT

Meeting Date 07/10/03
Agenda Item 3

TO: Planning Commission

FROM: Richard Patenaude, Principal Planner

SUBJECT: Variance Application No. PL-2003-0219 – Roberto Lomeli (Applicant/Owner) – To Retain 350-Square-Foot Carport Addition that Would Exceed 50 Percent of the Residence Area

The Property Is Located at 956 Folsom Avenue in a Single-Family Residential (RS) District

RECOMMENDATION:

Staff recommends that the Planning Commission:

1. Find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, Section 15305, Minor Alterations in Land Use Limitations; and
2. Approve the variance request allowing a 350-square-foot carport extension, subject to the attached findings and conditions of approval.

DISCUSSION:

The property owner recently constructed (1) a 350-square-foot carport attached to a garage and (2) a 750-square-foot free-standing carport only 2 feet from the front and side property lines. Each structure exceeds the floor-area allowance of 50 percent of the area of the residence. The structures came to the attention of the City as a result of a complaint to the Community Preservation office. The structures were built without benefit of a building permit and a notice to correct the situation was issued. The owner subsequently filed an application for setback and coverage variances.


On June 26, 2003, the Planning Commission denied the variances for the 750-square-foot carport, but recommended approval of the 350-square-foot carport and directed staff to bring back findings and conditions supporting the recommendation (see Attachments B and C).

Prepared by:

A handwritten signature in black ink, appearing to read "R. Patenaude", is written over a horizontal line.

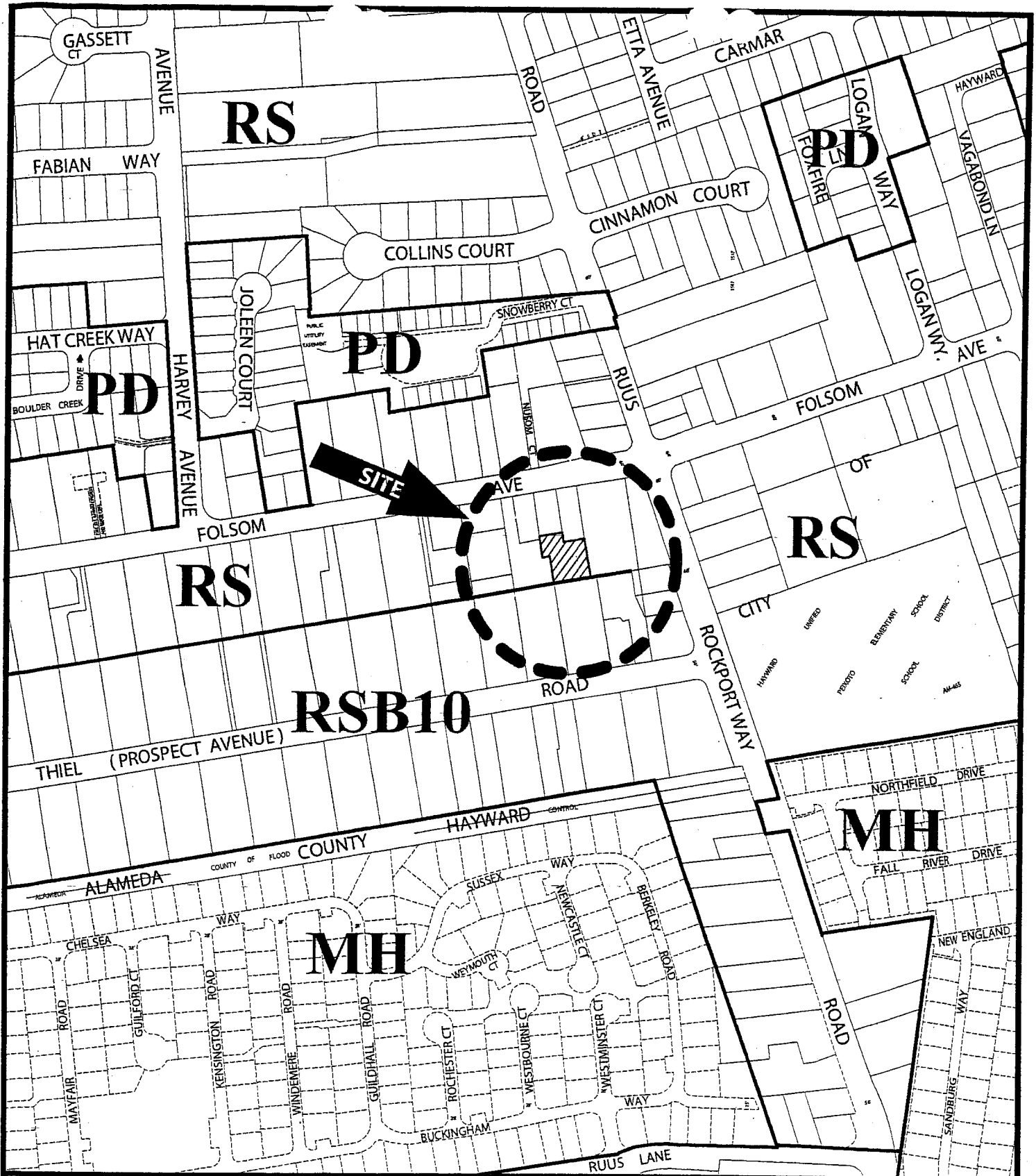
Richard E. Patenaude, AICP
Principal Planner

Recommended by:


Dyana Anderley, AICP
Planning Manager

Attachments:

- A. Area Map
- B. Findings for Approval
- C. Conditions of Approval
- D. Planning Commission Agenda Report/Minutes – 6/26/03
Plans



Area & Zoning Map

PL-2003-0219 VAR

Address: 956 Folsom Avenue

Applicant: Roberto Lomeli

Owner: Roberto Lomeli

MH (P)-Mobile Home Park

PD-Planned Development

RS-Single-Family Residential,RSB4,RSB6



Variance Application No. PL-2003-0219

Roberto Lomeli (Applicant/Owner)

Findings of Approval

Request to To Retain Carport Addition Exceeding 50 Percent of the Residence Area

- A. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305 Class 5(a), Minor Alterations in Land Use Limitations.
- B. There are special circumstances applicable to this property in that it is irregularly shaped and located at the end of a private common easement that limits the placement of structures, and the residence is smaller than average for the neighborhood, limiting the size of accessory structures.
- C. Strict application of the Zoning Ordinance would deprive such property of privileges enjoyed by other properties in the vicinity under the same zoning classification in that the size of the residence is smaller than the average size of others in the neighborhood and other similar zoning districts.
- D. The variance would not constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and the Single-Family Residential zone in which the property is situated in that other properties with similar circumstances would be granted the same consideration.

Variance Application No. PL-2003-0219

Roberto Lomeli (Applicant/Owner)

Conditions of Approval

Request to To Retain Carport Addition Exceeding 50 Percent of the Residence Area

1. Variance Application No. PL-2003-0219 is approved subject to the conditions listed below. All improvements, including the lot line adjustment, indicated on Exhibit "A", are hereby approved (except as noted below). This permit becomes void one year after the effective date of approval, unless prior to that time a building permit application has been accepted for processing by the Building Official, or a time extension of this application is approved.
2. The permittees shall assume the defense of and shall pay on behalf of and hold harmless the City, its officers, employees, volunteers and agents from and against any or all loss, liability, expense, claim costs, suits and damages of every kind, nature and description directly or indirectly arising from the performance and action of this permit.
3. Any proposal for alterations to the proposed site plan and/or design, which does not require a variance to any zoning code, must be approved by the Planning Director prior to implementation.
4. Violation of conditions is cause for revocation of this permit, subject to a public hearing before the duly authorized reviewing body.



not preclude other projects coming back. She said she understood them to say that certain areas might be difficult to develop. The quarry might need too much development right now for them to go with it. She explained that maybe the quarry needs a rest. It will be worked until 2008. Like to see it played out, reclaimed and, perhaps, some years later look at it again, as a result she would not be accepting the amendment.

Commissioner Zermeno then offered a **substitute motion**, seconded by Commissioner McKillop, to accept the staff alternative plus, a plan to restudy the LaVista Quarry as well as the Zaballos property, Oak Hills. He said he understands the concerns expressed but felt assured there would be enough safeguards. He was trying to look into the future at the needs of the City of Hayward. The motion **carried** by the following vote:

AYES:	COMMISSIONERS Thnay, McKillop, Zermeno
	CHAIRPERSON Bogue
NOES:	COMMISSIONER Caveglia, Sacks
ABSENT:	None
ABSTAIN:	Halliday

2. Variance Application No. PL-2003-0219 - Roberto Lomeli (Applicant/Owner) - To Retain Two Carports that Exceed 50 Percent of The House Area and Are Located within The Required Front and Side Yard - The Property is Located at 956 Folsom Avenue

Associate Planner Camire described the carports which were already built on the property without permission. She noted that although the property is an irregular shape, staff is not supporting approval of the variance since it impacts the neighbors light and view. There is also an impediment to allowing emergency vehicles access to the home.

The public hearing opened at 10:53 p.m.

Alberto Lens, a neighbor, said that before these neighbors moved in, the lot was dirt, with a lot of mud and was ugly. He said his neighbors used to work on cars everyday. Now, these people have fixed the house nicely. The yard is concrete, and a clean area. So this is a good improvement. He said he liked what they have done and supported the variance application. They are two very hard workers with five children. He said he came to say the carports do not bother him since they are such an improvement. He added that that they could have built a second story on the house and they would have been legal. This is really not bothering anyone.

The public hearing closed at 10:58 p.m.

Chairperson Bogue discussed the setback of the existing garage, and asked whether the accessory building would be legal if they demolished the existing garage.

Commissioner Zermeño said they were trying to find whether they can save the existing buildings.

Planning Manager Anderly explained that the Planning Commission does not have the authority to waive building codes.

Commissioner Sacks said she noted two problems on the property, not enough room for a car to turn around nor enough room for emergency vehicle.

Principal Planner Patenaude explained that the larger carport partially blocks the access to the driveway with only 13-foot access.

Commissioner Sacks asked how they could save some of it but not have nightmares for future property owners. She added that it might be okay now, but later it could be a problem. She said she felt bad about the situation, and was asking whether anything could be salvaged.

Principal Planner Patenaude explained that the present carport attached to the garage might be saved.

Commissioner Sacks asked whether the commission would still need to approve a variance for this.

Principal Planner Patenaude agreed that if the other one is removed, they would still need a variance.

Commissioner Sacks **moved**, seconded by Commissioner Halliday, to deny the variance for the larger 750-foot structure and approve the variance for the smaller 350-foot structure with staff to bring back findings and conditions of approval.

The **motion passed 6:1**, with Commissioner Zermeño voting "No."

Assistant City Attorney Conneely reminded them that the applicant could appeal the denial of the variance for the 750-foot structure.

~~3. Use Permit No. PL-2002-0577 - Jack-in-the-Box (Anthony Poligono Operator/ Applicant) - Foodmaker Inc. (Owner) - Request to Amend Use Permit 80-109 to Expand Hours of Drive-Through to 24 Hours Daily - The Property is Located at 1075 Tennyson Road Approximately 150 Feet East of Tampa Avenue~~

~~Principal Planner Patenaude presented the report. Commissioner Zermeño recused himself. Principal Planner Patenaude reported that the primary issue is crime in the area and police calls to the area, half of which occur after 10 p.m. Police noted the service calls were more frequent and serious when the restaurant was open later and longer. He said opening late might contribute to more crime. He said the application gave staff the opportunity to look at previously approved conditions. Staff recommended denying the request but modifying the conditions of approval to include daily pick-up of litter by employees. Also require management to assure orderly conduct~~



CITY OF HAYWARD AGENDA REPORT

Planning Commission

Meeting Date 06/26/03

Agenda Item 2

TO: Planning Commission

FROM: Arlyne J. Camire, Associate Planner

SUBJECT: Variance Application No. PL-2003-0219 – Roberto Lomeli (Applicant/Owner) – To Retain Two Carports that Exceed 50 Percent Of The House Area and Are Located within The Front and Side Yard set backs

The Property Is Located at 956 Folsom Avenue in a Single-Family Residential (RS) District

RECOMMENDATION:

Staff recommends that the Planning Commission:

1. Find that the proposed project is Statutorily Exempt from the California Environmental Quality Act (CEQA) guidelines, Section 15270 (a), Projects Which Are Disapproved, and
2. Deny the variance requests, subject to the attached findings.

DISCUSSION:

This 8,581-square-foot residential property is located on a private drive in a 5-lot subdivision off of Folsom Avenue, west of Ruus Road, in the Tennyson-Alquire Neighborhood. The property is behind three properties of the same subdivision that front onto Folsom Avenue. The 1,288-square-foot house and a 400-square-foot, 2-car garage were built in 1951. The property owner recently constructed two structures: (1) a 350-square-foot, two-car carport in front of the garage 6 feet from the side property line and (2) a 750-square-foot carport only 2 feet from the side property line where 5 feet is required and within the 20-foot front yard setback. The structures came to the attention of the City as a result of an anonymous complaint to the Community Preservation office. The inspector found that the structures were built without benefit of a building permit and a notice to correct the situation was issued.

The area of accessory buildings, either separately or cumulatively, is not permitted to exceed 50 percent of the total area of the ground floor of the house, but the area of the accessory structures on subject property *exceeds* that of the house. Since the house is 1288 square feet, the area that may be devoted to accessory structures is 644 square feet. The existing garage consists of approximately 400 square feet, so only 244 square feet could be devoted to another accessory structure.

The 350-square-foot carport located immediately in front of the garage is wood with brick supports and a fiberglass shingle gable roof with yellow stucco to match the house. It is approximately 17.5 feet deep by 20 feet wide. The depth does not meet the minimum 19-foot depth of a carport, but it does meet setback standards which permit accessory structures 5 feet from side and rear property lines. The area of this carport (350 square feet) when considered with the existing garage (400 square feet) exceeds the overall area permitted for accessory structures (644 square feet).

The 750-square-foot (50' x 15') carport is wood frame with a fiberglass shingle gable roof to match the house. This structure is used as a carport and for the storage of items on removable 6-foot high metal shelves. It is located only 2 feet from the front property lines where the required front yard setback is 20 feet, and it is only 2 ½ feet from the other side property lines where at least 5 feet is required. In addition, there is less than 14 feet in which vehicles can back up where at least 26 feet is required. Because of the proximity of this structure to property lines, the Uniform Building Code does not permit an open carport; therefore, should the Planning Commission approve the structure, a one-hour fire wall would have to be constructed along three sides of the carport. At 750 square feet, the area of the carport exceeds the maximum area permitted for accessory structures.

Although the property is irregular in shape and is unusual in that structures on the property are not visible from Folsom Avenue, staff believes that approving the variances would be granting a special privilege. Additionally, it would result in buildings that are incompatible with surrounding properties in that neighboring properties should be afforded adequate light, air and privacy associated with buildings constructed where permitted. For these reasons, staff does not support the variances.

Should the Planning Commission approve this application, staff should be directed to return with appropriate environmental review, findings and conditions of approval.

Environmental Review:

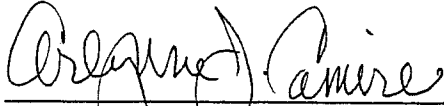
The proposed project is statutorily exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15270 (a), Projects Which are Disapproved.

Public Notice:

On April 10, 2003, a Referral Notice was mailed to every property owner and occupant within 300 feet of the subject site, as noted on the latest assessor's records, and the Tennyson-Alquire Homeowners Association, the Eastwood Homeowner's Association, the Warren Curtis Homeowners Association and the Tennyson-Alquire Task Force members. Staff has received several telephone calls in support from neighboring residents.

On June 16, 2003, a Notice of Public Hearing for the Planning Commission meeting was mailed. Staff received a telephone call in support from a resident that lives on Thiel Road.

Prepared by:



Arlynn J. Camire, AICP
Associate Planner

Recommended by:



Dyana Anderly, AICP
Planning Manager

Attachments:

- A. Area Map
- B. Findings for Denial
Plans

VARIANCE APPLICATION NO. PL-2003-0219
ROBERT LOMELI (APPLICANT/OWNER)
750-SQUARE-FOOT CARPORT
956 FOLSOM AVENUE
FINDINGS FOR DENIAL

- A. The proposed project is statutorily exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15270 (a), Projects Which are Disapproved.
- B. Although the property is of unusual shape and location, the location of the structure in proximity to the property line and in excess of permitted area would result in a building that is incompatible with surrounding properties in that neighboring properties should be afforded adequate light, air and privacy associated with buildings constructed where permitted.
- C. Strict application of the Zoning Ordinance would not deprive such property of privileges enjoyed by other properties in the vicinity under the same zoning classification in that other properties at similar size and shape would not be able to build within the minimum front or side yard set backs.
- D. The variances would constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and the Single-Family Residential (RS) District in which the property is situated in that other properties with similar circumstances have not been granted the same consideration.

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. 03

Introduced by Council Member _____

me
9/12/03

RESOLUTION FINDING THE PROJECT CATEGORICALLY
EXEMPT FROM CEQA REVIEW AND DENYING
VARIANCE APPLICATION NO. PL-2003-0219

WHEREAS, there has been presented to the City Council of the City of Hayward, by Roberto Lomeli, (Applicant/Owner) Variance Application No. PL-2003-0219 to retain a 750-square-foot carport that is within the required front and side yard setbacks and exceeds 50 percent of the house area and that had been constructed without a building permit, located at 956 Folsom Avenue; and

WHEREAS, the Planning Commission denied the variance for the 750-square-foot carport at its meeting on June 26, 2003; and

WHEREAS, the matter was appealed to the City Council within the time and manner provided by law; and

WHEREAS, the City Council finds and determines that:

1. The proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) guidelines, pursuant to Section 15305 Class 5(a), Minor Alterations in Land Use Limitations.
2. There are no special circumstances applicable to the property. Although the property is of unusual shape and location, the location of the structure in proximity to the property line and in excess of the permitted area would result in a building that is incompatible with surrounding properties in that the neighboring properties would not be afforded adequate light, air and privacy.
3. Strict application of the Zoning Ordinance would not deprive such property of privileges enjoyed by other properties in the vicinity under the same zoning classification in that other properties of similar size and shape are not entitled to build within the minimum front and side yard setbacks.
4. The variance would constitute a grant of a special privilege inconsistent with the limitations upon other properties in the vicinity and the Single-Family Residential zone in which the property is situated in that other properties with similar circumstances have not been granted the same consideration.

NOW, THEREFORE, BE IT RESOLVED that, based on the foregoing findings, the City Council of the City of Hayward hereby denies Variance Application No. PL-2003-0219 and upholds the Planning Commission's denial action.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2003

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

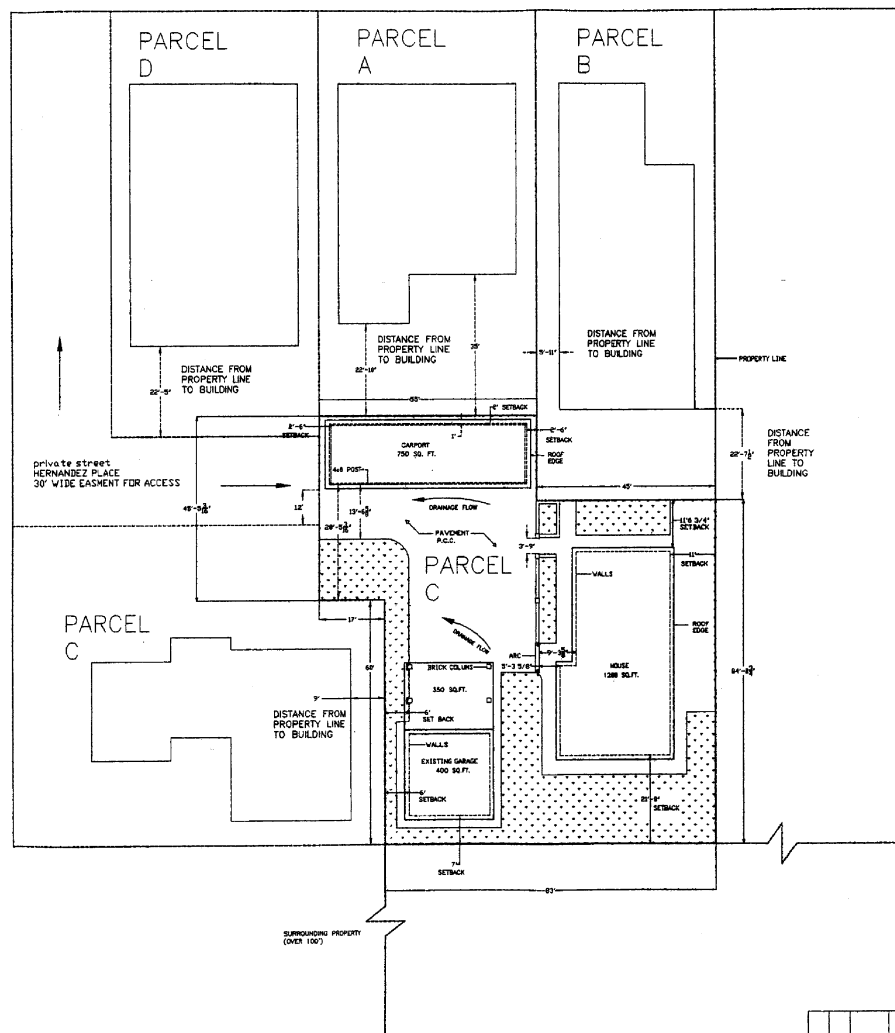
ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

FOLSOM AVENUE



General Notes

File to the street is a drive way which is an easement for access.



Match area grass.

No.	Revision/Issue	Date

Drawn by:

MARY ARGUETA

(510) 828-5021

Project Name and Address:

OWNER:

ROBERTO LOMELI
956 FOLSOM AVENUE
HAYWARD, CA 94544
(510) 784-2368

Project: **CARPORT & GARAGE**

Date: **4-01-03**

Scale: **AS NOTED**

Sheet: **A 1**